

Supreme Court upholds city impact fees

BY DEENA WINTER / Lincoln Journal Star
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Some city officials will no longer have to start their Friday mornings by checking the state Supreme Court's Web site for a decision on a case important to the city's future.

The Supreme Court heard arguments on the legality of the city's impact fees in September. And as the Fridays rolled by in October, November, December, January, February and March, things began to get tense down at city hall.

But this Friday, the day the court usually issues rulings, the tension lifted for public works director Karl Fredrickson. His business manager called him at IHOP, where he was having pancakes before work, with the long-awaited news. The city won.

The court ruled that the city's controversial impact fees are legal, inspiring subdued relief at city hall, and disappointment among Lincoln builders.

"It's kind of a relief not to have to worry every Friday," Fredrickson said. "We're happy it went in the city's favor. And when we say 'city,' we mean everybody in the city."

The city began collecting impact fees on new developments and expansions in 2003 to offset about half the cost of providing things like water and sewer service, parks and trails and roads necessary to, say, a new housing development.

Since then, the city has collected about \$12 million in impact fees charged to 6,400 building permits, \$4.5 million of which has already been spent. The parks and recreation department chose not to spend its money while awaiting the outcome of the lawsuit.

The Home Builders Association of Lincoln and Hartland Homes Inc. challenged the fees, appealing a district judge's ruling to the state Supreme Court.

The builders argued the fees amounted to an illegal tax because they weren't authorized by the Legislature.

Bill Blake, the attorney who represented the builders, said Friday that this is a far-reaching decision, giving the city "a very broad grant of power."

"We're obviously disappointed," Blake said. "We don't know what the City Council may do next as a result of this decision."

Allen Barber, president of the Home Builders Association, said the ruling could open a Pandora's box of taxes.

The builders could ask for a re-hearing with the Supreme Court, but don't intend to, Barber said. There's no further opportunity for appeal, since the state court is the final decision-maker on state constitutional issues.

"Obviously we're very disappointed, but we've got to respect the decision," Barber said.

The builders still believe impact fees have slowed construction in the past three years, pushing building permits down 40 percent.

But Barber said the group will work with Mayor Coleen Seng's administration to try to modify the system and make it more fair.

Seng reached out to the builders Friday, calling the group to say she wants to work with them and will listen to any ideas they have.

Barber said impact fees are particularly tough on first-time home buyers. People who buy new homes pay a fee of \$4,057, regardless whether it's a \$100,000 house or \$800,000 house (although the size of the water meter can increase the fee). Impact fees for houses started at about \$2,500 when they began being charged in 2003.

The current \$4,000 can mean the difference between qualifying for a mortgage or not, Barber said.

"That's killing those first-time home buyers and young kids trying to get into a home," he said.

The price of undeveloped land in the region is \$6,000 to \$8,000 an acre, Barber said, but in Lincoln it has skyrocketed to California rates, at more than \$60,000 an acre.

The issue has been a sore spot between builders and the city; earlier this week city officials were wrangling over complications related to the court case.

"There are and probably will continue to be very strong feelings both ways on it," Fredrickson said. "We'd like to put it behind us and get moving forward in the city."

Funds are tight at city hall these days, and a ruling against the city would have put even more pressure on the city's budget.

"It would've been interesting," Fredrickson said.

While builders will be disappointed by the court decision, developers are less affected because the fees are charged when a building permit is issued. Developers buy the land, develop the area with streets, water and sewer service, sell it and walk away.

Developer Steve Champoux, for example, is glad to see a resolution because it "cleans up" the development end of deals.

“The city was going to make us pay regardless of what they decided,” he said. “What they don’t realize is that the city will tag it on one of the two, and it all comes out of the buyer’s pockets.”

However, he believes the city charges too much in impact fees.

The ruling will make it much easier to finish an annexation agreement with the city for his Prairie Village North development near 84th and Adams streets, for example. The city had been asking Champoux to pay some \$5 million in infrastructure improvements, with no guarantee that he’d be paid back if impact fees were declared illegal.

However, those on both sides of the impact fee issue are glad the issue has been resolved.

“At least we can move forward,” Blake said.

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